

108TH CONGRESS
1ST SESSION

S. 1776

To amend title 49, United States Code, relating to responsibility for intermodal equipment compliance with commercial motor vehicle safety requirements, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 23, 2003

Mr. CAMPBELL introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend title 49, United States Code, relating to responsibility for intermodal equipment compliance with commercial motor vehicle safety requirements, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Intermodal Equipment
5 Safety and Responsibility Act of 2003”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) Promoting safety on United States high-
2 ways is a national priority. The Secretary of Trans-
3 portation has promulgated the Federal Motor Car-
4 rier Safety Regulations to further this purpose. The
5 systematic maintenance, repair, and inspection of
6 equipment traveling on public highways in interstate
7 commerce are an integral part of this safety regime.

8 (2) Intermodal transportation plays a signifi-
9 cant role in expanding the United States economy,
10 which depends heavily upon the ability to transport
11 goods by various modes of transportation.

12 (3) Although motor carriers and their drivers
13 often receive trailers, chassis, containers, and other
14 items of intermodal equipment to be transported in
15 interstate commerce, they do not possess the req-
16 uisite level of control or authority over this inter-
17 modal equipment to perform the systematic mainte-
18 nance, repair, and inspection necessary to ensure
19 compliance with the applicable Federal Motor Car-
20 rier Safety Regulations and to ensure the safety of
21 United States highways.

22 (4) As a result of roadside inspections, motor
23 carriers and their drivers are cited and fined for vio-
24 lations of the Federal Motor Carrier Safety Regula-
25 tions attributable to intermodal equipment that they

1 do not have the opportunity to systematically main-
2 tain. These violations negatively affect the safety
3 records of motor carriers.

4 **SEC. 3. PURPOSE.**

5 The purpose of this Act is to ensure that only those
6 parties that control intermodal equipment transported on
7 public highways in the United States (and thus have the
8 opportunity and authority to systematically maintain, re-
9 pair, and inspect the intermodal equipment) have legal re-
10 sponsibility for the safety of that equipment as it travels
11 in interstate commerce.

12 **SEC. 4. DEFINITIONS.**

13 Section 5901 of title 49, United States Code, is
14 amended by adding at the end the following new para-
15 graphs:

16 “(9) ‘motor carrier’ includes—

17 “(A) a motor private carrier, as defined in
18 section 13102 of this title; and

19 “(B) an agent of a motor carrier.

20 “(10) ‘intermodal equipment’—

21 “(A) means equipment that is commonly
22 used in the intermodal transportation of freight
23 over public highways as an instrumentality of
24 foreign or interstate commerce; and

1 “(B) includes a trailer, chassis, container,
2 and any device associated with a trailer, chas-
3 sis, or container.

4 “(11) ‘equipment interchange agreement’, with
5 respect to intermodal equipment, means a written
6 document that—

7 “(A) is executed by a controller of the
8 equipment, or its agent, and a motor carrier;
9 and

10 “(B) establishes the responsibilities and li-
11 abilities of both parties as they relate to the
12 interchange of the equipment.

13 “(12) ‘controller’, with respect to intermodal
14 equipment, means any party that has any legal
15 right, title, or interest in the equipment, except that
16 a motor carrier—

17 “(A) is not a controller of the equipment
18 solely because it provides or arranges for any
19 part of the intermodal transportation of the
20 equipment; and

21 “(B) may not be considered a controller of
22 the equipment if authority for systematic main-
23 tenance and repairs of the equipment has not
24 been delegated to the motor carrier.

1 “(13) ‘interchange’, with respect to intermodal
2 equipment, means the act of providing the equip-
3 ment to a motor carrier for the purpose of trans-
4 porting the equipment for loading or unloading by
5 any party or repositioning the equipment for the
6 benefit of the equipment controller, except that such
7 term does not mean the leasing of the equipment to
8 a motor carrier for use in the motor carrier’s over-
9 the-road freight hauling operations.

10 “(14) ‘applicable safety regulations’ means the
11 regulations applicable to controllers of intermodal
12 equipment under section 5909 of this title.”.

13 **SEC. 5. JURISDICTION OVER EQUIPMENT CONTROLLERS.**

14 Chapter 59 of title 49, United States Code, is amend-
15 ed by adding at the end the following new section:

16 **“§ 5909. Jurisdiction over equipment controller**

17 “The authority of the Secretary of Transportation to
18 prescribe regulations on commercial motor vehicle safety
19 under section 31136 of this title shall apply to controllers
20 of intermodal equipment that is interchanged or to be
21 interchanged.”.

22 **SEC. 6. EQUIPMENT CONTROLLER RESPONSIBILITY.**

23 (a) IN GENERAL.—Chapter 59 of title 49, United
24 States Code, as amended by section 5, is further amended
25 by adding at the end the following new section:

1 **“§ 5910. Equipment inspection, repair, and mainte-**
2 **nance**

3 “(a) IN GENERAL.—Notwithstanding any provision
4 of an equipment interchange agreement, a controller of
5 intermodal equipment that is interchanged or to be inter-
6 changed—

7 “(1) shall be responsible and held liable for the
8 systematic inspection, maintenance, and repair of
9 the equipment;

10 “(2) shall, each time prior to offering a motor
11 carrier the equipment for interchange, inspect the
12 equipment and provide such maintenance on, and
13 make such repairs to, the equipment to ensure that
14 such equipment complies with all applicable safety
15 regulations at all times; and

16 “(3) shall not offer intermodal equipment to a
17 motor carrier unless such equipment has been in-
18 spected and repaired as necessary to comply with
19 such regulations.

20 “(b) REIMBURSEMENT.—

21 “(1) IN GENERAL.—In the event that a repair
22 of interchanged intermodal equipment is necessary
23 while in a motor carrier’s possession in order to
24 comply with applicable safety regulations, the con-
25 troller of the equipment shall promptly reimburse
26 the motor carrier for the actual expenses that are in-

1 curred by the motor carrier for the necessary repair,
2 together with compensation for any loss incurred by
3 the motor carrier by reason of delay in the transpor-
4 tation of the equipment necessitated by the need for
5 the repair.

6 “(2) EXCEPTION.—The controller of intermodal
7 equipment shall not be liable to provide reimburse-
8 ment or compensation for a repair to a motor carrier
9 under paragraph (1) if the motor carrier’s neg-
10 ligence or willful misconduct caused the condition re-
11 quiring the repair.

12 “(c) FINES.—The Secretary may prescribe fines
13 against controllers of intermodal equipment for violations
14 of this section.”.

15 **SEC. 7. SAFETY COMPLIANCE.**

16 (a) IN GENERAL.—Chapter 59 of title 49, United
17 States Code, as amended by section 6, is further amended
18 by adding at the end the following new section:

19 **“§ 5911. Compliance with safety regulations**

20 “(a) LIABILITY OF EQUIPMENT CONTROLLER.—Not-
21 withstanding any provision of an equipment interchange
22 agreement, the controller of intermodal equipment covered
23 by such agreement shall be liable for each violation of ap-
24 plicable safety regulations that is attributable to such
25 equipment and shall pay any fine, penalty, and damages

1 resulting from such violation, except that the controller
2 of such equipment shall not be liable for any such viola-
3 tions that is proximately caused by the negligence or will-
4 ful misconduct of a motor carrier that is not the controller
5 of such equipment.

6 “(b) LIMITATION ON LIABILITY OF MOTOR CAR-
7 RIER.—A motor carrier who receives intermodal equip-
8 ment through interchange may not be held liable for a vio-
9 lation of applicable safety regulations that is attributable
10 to such equipment other than under the circumstances
11 and to the extent provided in subsection (a).

12 “(c) LIMITATION ON EFFECT.—No record or report
13 of a violation of applicable safety regulations attributable
14 to interchanged intermodal equipment, whether issued by
15 a Federal, State, or local law enforcement authority, shall
16 have any effect on a motor carrier’s overall safety rating
17 or safety status measurement system score, as determined
18 by the Federal Motor Carrier Safety Administration, or
19 on a driving record of a driver for the motor carrier unless
20 such violation was proximately caused by the negligence
21 or willful misconduct of the motor carrier or driver, re-
22 spectively.

23 “(d) PROCEDURE FOR RECORDS CORRECTIONS.—
24 The Secretary of Transportation shall prescribe an expe-
25 dited procedure to correct records or reports of violations

1 that under subsection (c) should not have been adversely
2 affected by a violation of applicable safety regulations.”.

3 (b) TIME FOR PRESCRIBING RECORDS CORRECTION
4 PROCEDURES.—The Secretary shall issue final regulations
5 setting forth the expedited procedures required by section
6 5910(d) of title 49, United States Code, not later than
7 180 days after the date of enactment of this Act.

8 **SEC. 8. AUTHORITY TO INSPECT.**

9 Chapter 59 of title 49, United States Code, as
10 amended by section 7, is further amended by adding at
11 the end the following new section:

12 **“§ 5912. Authority to inspect**

13 “(a) AUTHORITY.—The Secretary of Transportation
14 is authorized to enter any facility of a controller of inter-
15 modal equipment interchanged for use on a public highway
16 in order to inspect the equipment to determine whether
17 the equipment complies with the applicable regulations.

18 “(b) INSPECTION PROGRAM.—The Secretary shall es-
19 tablish and implement with appropriate staffing an inspec-
20 tion and audit program at facilities of controllers of inter-
21 modal equipment in order to make determinations under
22 subsection (a). Inspection of equipment and maintenance
23 records for such equipment at such facility shall take place
24 not less frequently than once every 3 months.

1 “(c) NON-COMPLYING EQUIPMENT.—Any intermodal
 2 equipment that is determined under this section as failing
 3 to comply with applicable safety regulations shall be
 4 placed out of service and may not be used on a public
 5 highway until the repairs necessary to bring such equip-
 6 ment into compliance have been completed. Repairs of
 7 equipment placed out of service shall be documented in
 8 the maintenance records for such equipment.”.

9 **SEC. 9. PROHIBITION ON RETALIATION.**

10 Chapter 59 of title 49, United States Code, as
 11 amended by section 8, is further amended by adding at
 12 the end the following new section:

13 **“§ 5913. Penalties for retaliation**

14 “(a) RETALIATION PROHIBITED.—A controller of
 15 intermodal equipment may not take any action to threat-
 16 en, coerce, discipline, discriminate, or otherwise retaliate
 17 against a motor carrier in response to a request made by
 18 the motor carrier for maintenance or repair of equipment
 19 intended for interchange in order to comply with the appli-
 20 cable safety regulations.

21 “(b) FAILURE TO TIMELY PROVIDE SAFE EQUIP-
 22 MENT DEEMED TO BE RETALIATION.—Upon receiving a
 23 motor carrier’s request for maintenance or repair of inter-
 24 modal equipment to be picked up by the motor carrier in
 25 an interchange of equipment, the controller of intermodal

1 equipment shall be considered to have retaliated against
2 the motor carrier for the purposes of this section if the
3 controller of intermodal equipment fails to provide the
4 motor carrier with the equipment in a condition compliant
5 with the applicable safety regulations within 60 minutes
6 after the motor carrier arrives to pick up the equipment
7 at the place where the equipment is to be picked up.

8 “(c) PENALTY.—A controller of intermodal equip-
9 ment that violates subsection (a) shall be liable to the
10 United States Government for a civil penalty of up to
11 \$10,000 for each violation.”.

12 **SEC. 10. DELEGATION OF MAINTENANCE RESPONSIBILITY.**

13 Chapter 59 of title 49, United States Code, as
14 amended by section 9, is further amended by adding at
15 the end the following new section:

16 **“§ 5914. Maintenance responsibility**

17 “A controller of intermodal equipment may not dele-
18 gate its responsibility to systematically maintain and re-
19 pair equipment intended for interchange to a motor car-
20 rier or motor carrier agent in an equipment interchange
21 agreement.”.

22 **SEC. 11. COMPATIBILITY OF STATE LAWS.**

23 (a) IN GENERAL.—Chapter 59 of title 49, United
24 States Code, as amended by section 10, is further amend-
25 ed by adding at the end the following new section:

1 **“§ 5915. Compatibility of State laws**

2 “(a) PREEMPTION GENERALLY.—Except as provided
3 in subsection (b) or as otherwise authorized by Federal
4 law, a law, regulation, order, or other requirement of a
5 State or political subdivision of a State, or of a tribal orga-
6 nization, is preempted if compliance with such law, regula-
7 tion, order, or other requirement would preclude compli-
8 ance with a requirement imposed under this chapter.

9 “(b) CERTAIN RULES NOT PREEMPTED.—A law, reg-
10 ulation, order, or other requirement of a State or political
11 subdivision of a State, or of a tribal organization, shall
12 not be preempted under subsection (a) if such law, regula-
13 tion, order, or other requirement is more stringent than,
14 but otherwise compatible with, a requirement under this
15 chapter.

16 “(c) TRIBAL ORGANIZATION DEFINED.—In this sec-
17 tion, the term ‘tribal organization’ has the meaning given
18 such term in section (4)(l) of the Indian Self-Determina-
19 tion and Education Assistance Act (25 U.S.C. 450b(l)).”.

20 **SEC. 12. REPEAL OF OBSOLETE PROVISION.**

21 Section 5907 of title 49, United States Code, is re-
22 pealed.

23 **SEC. 13. CLERICAL AMENDMENTS.**

24 The table of sections at the beginning of such chapter
25 is amended—

1 (1) by striking the item relating to section
2 5907; and

3 (2) by adding at the end the following:

- “5909. Jurisdiction over equipment controller.
- “5910. Equipment inspection, repair, and maintenance.
- “5911. Compliance with safety regulations.
- “5912. Authority to inspect.
- “5913. Penalties for retaliation.
- “5914. Maintenance responsibility.
- “5915. Compatibility of State laws.”.

4 **SEC. 14. IMPLEMENTING REGULATIONS.**

5 (a) **REGULATIONS.**—The Secretary of Transpor-
6 tation, after notice and opportunity for comment, shall
7 issue regulations implementing the provisions of this Act.
8 The regulations shall be issued as part of the Federal
9 Motor Carrier Safety Regulations of the Department of
10 Transportation. The implementing regulations shall in-
11 clude—

12 (1) a requirement to identify controllers of
13 intermodal equipment that is interchanged or in-
14 tended for interchange in intermodal transportation;

15 (2) a requirement to match such equipment
16 readily to its controller through a unique identifying
17 number;

18 (3) a requirement to ensure that each controller
19 of intermodal equipment maintains a system of
20 maintenance and repair records for such equipment;

1 (5) a provision that prohibits controllers of
2 intermodal equipment that fail to attain satisfactory
3 compliance with such regulations from authorizing
4 the placement of equipment on public highways;

5 (6) a requirement for the Secretary to consider
6 the effect that adequate maintenance facilities may
7 have on safety condition of equipment;

8 (7) a process by which motor carriers and
9 agents of motor carriers may anonymously petition
10 the Federal Motor Carrier Safety Administration to
11 undertake an investigation of a noncompliant con-
12 troller of intermodal equipment;

13 (8) administrative procedures to resolve dis-
14 putes arising under the regulations; and

15 (9) the inspection and audit program required
16 under section 5912(b) of title 49, United States
17 Code, as added by section 8.

18 (b) TIME FOR ISSUING REGULATIONS.—The regula-
19 tions required under subsection (a) shall be developed pur-
20 suant to a rulemaking proceeding initiated not later than
21 120 days after the date of the enactment of this Act and
22 shall be issued not later than one year after such date
23 of enactment.

1 (c) DEFINITIONS.—For the purposes of this section,
2 the definitions set forth in section 5901 of title 49, United
3 States Code, as amended by section 4, shall apply.

4 **SEC. 15. AUTHORIZATION OF APPROPRIATIONS.**

5 There is authorized to be appropriated to the Federal
6 Motor Carrier Safety Administration such sums as may
7 be necessary for the establishment and implementation of
8 the inspection program required under section 5912 of
9 title 49, United States Code, as added by section 8.

10 **SEC. 16. EFFECTIVE DATE.**

11 Sections 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 of this
12 Act and the amendments made by such sections shall take
13 effect 30 days after the date of the enactment of this Act.

○